

TITLE 14. Fish and Game Commission
Notice of Proposed Emergency Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, and 2084, of the Fish and Game Code (FGC) and to implement, interpret or make specific said sections of said Code, proposes to re-adopt Section 749.3, Title 14, California Code of Regulations (CCR), relating to incidental take of longfin smelt during candidacy.

Informative Digest/Policy Statement Overview

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. FGC Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under the California Endangered Species Act (CESA). CESA prohibits unauthorized take of a candidate species, just as it prohibits such take of threatened and endangered species, from the time the Commission notifies interested parties and the general public of its acceptance of the petition.

FGC Section 2085 provides that once the Commission gives notice pursuant to FGC Section 2074.4 that it has designated a species a candidate under CESA, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of the prohibition on unauthorized take of listed or candidate species found in FGC Section 2080 unless the take is authorized in regulations adopted by the Commission pursuant to FGC Section 2084 or the Department of Fish and Game (Department) authorizes the take through the issuance of an incidental take permit under FGC Section 2081 or by other means authorized by the California Endangered Species Act (CESA).

CCR Section 749.3 would authorize and provide for take of longfin smelt during its candidacy subject to certain terms and conditions. The objective of these regulations is to allow specified activities to continue on an interim basis, subject to the measures in the regulations designed to protect longfin smelt, while the Department focuses its efforts on further evaluating the status of the species. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action may or may not be warranted.

The regulations as proposed in strikeout-underline format are attached to this notice. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission must make the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Public Comments on Proposed Emergency Regulations

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Specific Agency Statutory Requirements

The Commission has complied with the special statutory requirements for its emergency regulations found at Section 240 of the Fish and Game Code. A public hearing on these regulations will be held November 14, 2008, and the above finding that these regulations are necessary for the immediate preservation of the public peace, health and safety, or general welfare meets the requirements of Section 240.

Local Mandate Determination

The Commission has determined that the proposed emergency regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Commission has determined that the proposed emergency regulations will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement. The Commission has determined that the proposed emergency regulations will provide cost savings to local agencies in an undetermined amount. The Commission has determined that the proposed emergency regulations will provide cost savings to the state in an undetermined amount. The Commission has determined that the proposed emergency regulations will not result in costs or savings in federal funding to the State.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Dated: November 5, 2008